IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

L.P.A. No. 106 of 1996
Date of Decision: 30.7.2007

Gurdev Singh.

..... Appellant through Shri J.C.Verma, Senior Advocate with Ms.Meenakshi Verma, Advocate.

Versus

Union of India and others.

..... Respondents through Shri Gurpreet Singh, Advocate.

CORAM: HON'BLE MR. JUSTICE VIJENDER JAIN,
CHIEF JUSTICE
HON'BLE MR.JUSTICE MAHESH GROVER

....

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

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VIJENDER JAIN, CHIEF JUSTICE

In this appeal under Clause X of the Letters Patent against judgment dated 28.3.1995 of the learned Single Judge vide which C.W.P.No.2316 of 1991 filed by the appellant was dismissed, the following two questions have been thrown up for determination by this Bench:-

(i) Whether the request for voluntary retirement could be withdrawn after its acceptance, but before it became effect?

(ii) Whether the order rejecting the prayer for withdrawal can be termed arbitrary?

The appellant, while serving in Indian Army as a Junior

Commissioned Officer, made a request for voluntary retirement in June,1990, which was considered by the Unit Petition Committee. The said committee recommended his case for premature retirement. On 18.6.1990, the Commanding Officer, who had received the recommendation of the committee, finding the case to be genuine, recommended the case of the appellant to the higher authorities for premature retirement. Consequently, discharge orders were issued on 20.7.1990, according to which voluntary retirement of the appellant was to take effect from 30.4.1991. The appellant, who had a re-think, made a request for withdrawal of the request for voluntary retirement vide letter dated 1.12.1990. The prayer of the appellant was,however, rejected by the competent authority while exercising its power under Rule 11(2) of the Army Rules,1954 (for short, `the Rules'). The appellant assailed the action of the respondents by way of C.W.P.No.2316 of 1991 which was decided on 28.3.1995 negativing his plea. The learned Single Judge, while dismissing the writ petition, observed amongst other observations, as follows:-

> "Moreover, once the request of the petitioner for voluntary retirement has been accepted, no matter it was to take effect from a future date, the petitioner has no right to withdraw it."

The main grievance of the appellant is that he had the option to withdraw his prayer for voluntary retirement before it came into effect and mere acceptance thereof without notice to him would not dis-entitle him to withdraw the same.

We have heard the learned counsel for the parties and have perused the record.

In our opinion, the aforementioned observation of the learned Single Judge is erroneous and is also apparently in conflict with the provisions of Rule 11 of the Rules. The settled proposition of law is that a person can withdraw his resignation or request for voluntary retirement before the same becomes effective and when the arrangement between the employer and such an employee actually terminates. Sustenance can be drawn from the judgments of the Supreme Court in Union of India and others Versus Gopal Chandra Misra and others , (1978) 2 S.C.C. 301 and Shambhu Murari Sinha versus Project & Development India & Anr., (2000) 5 S.C.C. 621.

But, in the instant case, the facts reveal that the case of the appellant was considered according to Rule 11 of the Rules, which is as below:-

> "11. Discharge not to be delayed.- (1) Every person enrolled under the Act, shall, as soon as he becomes entitled under the conditions of his enrolment to be discharged, be so discharged with all convenient speed :
>
> Provided that no person shall be entitled to sucharge discharge, if the Central Government has, by notification suspended the said entitlement to discharge for the whole or a part of the regular Army.
>
> (2) The discharge of the person, validly sanctioned by the Competent Authority, may, with the consent of the discharged person, be cancelled by any authority superior to the authority who sanctioned the discharge either without any conditions or

subject to such conditions as such discharged person accepts."

Even though, the learned Single Judge had noticed the above reproduced rule, yet, he failed to apply the same to the facts of the case.

Sub-rule (2) of Rule 11 clearly vests a power in the competent authority to cancel the discharge of a person subject to his consent and subject to such conditions as may be imposed. The appellant, therefore, had the option to withdraw the prayer for voluntary retirement subject to the superior authority considering it in accordance with the provisions of Rule 11(2) and before the same became effective.

However, the superior authority vested with the power under Rule 11(2), has, by a detailed order dated 4.3.1991, not acceded to the request of the appellant as it has been noticed therein that at the time of making such prayer, he had highlighted his personal difficulties in support of his voluntary retirement, but at the time of withdrawal, a totally different case was sought to be put up by imputing motives to the superior authorities in his unit. The prayer was considered and rejected by giving cogent reasons.

Once the power vested in an authority is exercised judiciously by giving cogent reasons which, to our mind, has satisfied the judicial conscious of this Court, the same would not suffer from the vice of arbitrariness.

As a sequel to the above discussion, we hold that even though, the partial reasoning of the learned Single Judge was erroneous, but the ultimate conclusion noticing the exercise of power by the competent authority under Rule 11(2) of the Rules to disentitle the relief to the

appellant in the writ petition cannot be faulted with.

The appeal is devoid of any merit and we dismiss the same as such.

(Vijender Jain)
Chief Justice

July 30,2007
"SCM"

(Mahesh Grover)
Judge